87-387

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

No. _____

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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* *

DEBRA HEYDEN,

Petitioner,

vs.

ROGER SCHOENFELD, JOHN D. BILOTTI, JOHN A. SERPE, STANLEY KERKMAN, EUGENE BILOTTI, JAMES FONK, and DONALD ANDREOLI,

Respondents.

* *

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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EDITOR'S NOTE

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STATEMENT OF THE CASE

In October, 1985 Petitioner, Debra Heyden, filed a complaint with the United States District Court for the Eastern District of Wisconsin based on 42 U.S.C §1983, alleging violations of the Fourteenth Amendment Due Process and Equal Protection Clauses based upon the refusal of the of the Kenosha City and County Joint Services Board (hereinafter "Joint Services") to hire her as a dispatcher.

Respondents are individuals who were members of the Joint Services Board when Petitioner was refused employment in December of 1982.

The Joint Services Board is a quasi-governmental agency authorized by state statute. Wis. Stats. sec. 66.508. (A-10). Joint Services is not a county department. Joint Services' primary function is to provide administrative

support and dispatching services to the Kenosha County Sheriff's, City of Kenosha Police and City of Kenosha Fire Departments. Joint Services does not have the power to hire, fire or regulate the shifts of law enforcement officers. Joint Services has the legislative power to enact appropriate rules and regulations for the ". . . government, operation and maintenance of the safety building and employees thereof." Wis. Stats. sec. 66.508(7)(d). (A-10).

On October 27, 1982, Joint Services promulgated a written policy directive which provides that ". . . a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher . . ." and that the spouses rendered ineligible for employment as dispatchers ". . . would be offered a position in the records department."

The reason for the refusal to

hire Petitioner as a dispatcher was that she was married to a Kenosha County Sheriff's Deputy.

Petitioner was offered a position in the Joint Services records bureau which she accepted in July of 1983 (A-143).

The job which Petitioner sought involved ". . . public safety communications work . . ." where dispatchers ". . . are responsible for directing fire, patrol and rescue vehicles to specific areas to cover emergency situations, requests for assistance and calls for service." (A-146). The qualifications for the job as dispatcher include the ability ". . . to think and react quickly in emergency situations" and an "even temperment with the ability to remain cool and collected under stressful conditions." (A-150, 151).

Joint Services dispatchers are the essential communications link between public safety agencies (law enforcement officers) and the information available concerning emergency situations (A-146). They determine and exercise discretion in the need for action regarding law enforcement emergencies, assigning vehicles and arranging ". . . for the safety of the patrol officers or firefighters when the security of the individual is in question."

Joint Services dispatchers are unionized. Their union contract allows them to select shifts based upon seniority.

Dispatchers must work overtime into the next shift at times. Dispatchers trade work days and shifts as necessary. (A-130).

On May 1, 1986 Respondents filed a motion for summary judgment with supporting materials.

On May 21, 1986 Petitioner filed a cross motion for summary judgment on the liability issues.

The district court granted Respondents' motion for summary judgment in a decision and order dated August 12, 1986 (A-5), finding that the ". . . no-spouse policy was designed to reduce the incidents of dangerous accidents and mishaps which can occur where the dispatcher's spouse is a police officer or Sheriff's deputy." (A-17). Petitioner appealed from the judgment entered based upon that order.

On May 21, 1987 the United States Court of Appeals for the Seventh Circuit affirmed the district court's order and adopted its opinion in full (A-1). Petitioner has filed a petition for writ

of certiorari with this Court seeking review of the Court of Appeals decision.

This brief is respectfully submitted in opposition to the petition for writ of certiorari.

I. THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT FOLLOWED SUPREME COURT STANDARDS IN EVALUATING PETITIONER'S EQUAL PROTECTION AND DUE PROCESS ATTACKS ON THE NO-SPOUSE POLICY.

A. The Court of Appeals Correctly Determined That The Rational Basis Test Applies To The Equal Protection Attack On A Legislative Rule.

The Court of Appeals observed that the Petitioner argued the no-spouse policy created an unreasonable classification in violation of the Fourteenth Amendment equal protection clause of the United States Constitution because it does not apply to the spouses of Kenosha firefighters, to close family relatives other than spouses, or to record keepers who also have close daily contact with law enforcement officers. The Seventh Circuit followed the Supreme Court standard as set forth in City of Cleburne, Tex v. Cleburne Living Center, 105 S.Ct. 3249, 3254, (1985), for the proposition that generally, legislation

or official government action challenged as denying equal protection of the laws "is presumed to be valid and will be substained if the classification drawn ... is rationally related to a legitimate [governmental] interest." (A-16). The court also observed the rule, "[I]n assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification," citing Personnel Administrator of Mass. v. Feeney, 442 U.S. 256, 272, (1979).

The Petitioner acknowledges in her brief that this is the correct standard to be applied unless the classification burdens a "suspect class or a fundamental interest." (Petition pp. 26-27). The exceptions do not apply.

1. Not A Suspect Class

The Joint Services Board's no-spouse policy is not a classification

based upon gender. It is a neutral classification in the sense that it is not gender-based, established to assure public safety. For purposes of applying the correct test on the equal protection argument, this Court has decided that classifications based upon gender are not recognized as an inherently suspect class. Frontiero v. Richardson, 411 U.S. 677, (1973). Thus, the exception to the rational relationship test when dealing with a suspect class does not apply.

This Court repeated its instruction that the strict scrutiny test does not apply to gender-based classifications in Michael M. v. Superior Court, 450 U.S. 464, (1981) where at p. 468 it stated:

> Unlike the California Supreme Court, we have not held that gender-based classifications are "inherently suspect" and thus we do not apply so-called "strict scrutiny" to those classifications...

The Michael M. case truly involved gender-based classifications, unlike the fact situation before the Court in the present case. At any rate, it is clear that this Court has unequivocally instructed lower courts that strict strutiny does not apply to gender-based classifications.

2. There Is No Fundamental Right To Governmental Employment

The other exception to the rational basis test applies only when the classification impermissibly interferes with a fundamental right. Mrs. Heyden was an applicant for the dispatcher position with a local governmental unit and it is undisputed that her lawsuit is predicated entirely on Joint Services' refusal to hire her. The right to government employment is not a per se, fundamental right within the meaning of the Fourteenth

Amendment. Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 313, (1976) held that "this court's decisions give no support to the proposition that a right of governmental employment per se is fundamental." In accord, Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979). In Dandridge v. Williams, 397 U.S. 471, 485, (1970), this Court expressly stated that a standard less than strict scrutiny has consistently been applied to state legislation restricting the availability of employment opportunities.

Since the considerations of a suspect class and a fundamental right do not apply, the Court of Appeals utilized the appropriate standard of review.

B. The Court of Appeals Properly Applied the "Rational Basis" Test To This No-Spouse Policy.

The Court of Appeals and District

Court were guided by the following language stated in Murgia:

> We turn then to examine this state classification under the rational-basis standard. This inquiry employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary. Dandridge v. Williams, supra, at 485. Such action by a legislature is presumed to be valid.

supra at 314

The Court of Appeals reached the logical conclusion that the no-spouse policy was designed to reduce the incidence of dangerous accidents and mishaps which can occur where a dispatcher's spouse is a police officer or sheriff's deputy, and, further, that the policy bore a rational relation to and was a rational means of serving the Board's legitimate end (A-5).

Petitioner expectedly challenges the Court of Appeals' and District Court's analysis. We submit that the courts correctly applied the test. The Court of Appeals found that "there is no real dispute regarding the defendants' motivation and perceived justification for establishing the no spouse policy." (A-12). The genesis of the policy was that if a dispatcher's spouse was a law enforcement officer an emergency situation could give rise to a concern for the welfare of the spouse when the dispatcher was confronted with an emergency that required quick and efficient action (A-12, 13). While that type of confrontation or crisis may not be a daily occurrence in a dispatcher's job, it is inherent and the risk potential is very high.

In formulating and interpreting the rational basis test for legislative

pronouncements, the federal courts have been pragmatic. The objectives of a particular rule need not be specifically articulated by the promulgating body. U.S. Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 179 (1980) reh'g. den. 450 U.S. 960 (1981).

If any state of facts may reasonably be conceived to justify a particular rule, the classification in the rule must be sustained. McGowan v. Maryland, 366 U.S. 420, 426 (1961).

As the court of appeals and district court concluded, Joint Services' classification in the instant case was "well within the legislative prerogative." (A-17). The court aptly pointed out several "equally rational grounds" upon which it could be sustained including the elimination of either the potential for a serious injury or inefficiency or disruption in

the delivery of crucial public services (A-17). A regulation for the social welfare or public safety is accorded a "... presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality." Ass'n. of Civil. Tech., Mont. Air Chap. v. F.L.R.A., 756 F.2d 172, 177-178 (D.C. Cir. 1985); City of Cleburne, Tex. v. Cleburne Living Center, 105 S.Ct. 3249 (1985).

The Petitioner's supporting affidavits clearly did not establish sufficient indicia of arbitrariness and irrationality. In large part they were subjective, argumentative opinions which skirted the core issue as to the justifiable reasons for the formulation of the policy and its propriety within the police and sheriff units. Petitioner's statement concerning percentage of males in the police, fire

and sheriff's departments is not supported by anything in the record and is not accurate. (Petition-47).

At the crux of the Court of Appeal's decision is the plain fact that emergencies can and will occur in law enforcement work and that compounding factors such as spousal concern may legitimately be removed from that setting. Notwithstanding Petitioner's tortuous efforts to deny a dispatcher's key emergency role, it is indisputably ingrained in the position. The Court of Appeals relied upon Petitioner's own affidavit to illustrate the point that dispatchers are confronted with sudden dangerous situations which they handle with a large degree of discretion and resourcefulness. (A-11, 12).

Mr. Roger Schoenfeld, former director of Joint Services and Chief Deputy Sheriff, articulated in an

affidavit supporting the defendants' motion for summary judgment the Joint Services Board's objectives in establishing this rule. They are, among others, (1) a danger that a dispatcher might be reluctant to send his/her spouse officer to a dangerous call, (2) potential inability to function in an emergency if a spouse officer were killed or injured on duty, (3) a danger that a dispatcher might pay undue attention to a spouse-officer's duty activities in a danger situation at the expense of other required duties (A-115).

In its decision the Court of Appeals carefully considered and rejected the plaintiff's equal protection arguments as a matter of law. Relying on several Supreme Court cases, the court held that the no-spouse policy reflects a valid legislative classification (A-17 thru 21).

The applicable law is rather clear that any statute or rule need not be perfect, all-encompassing, or mathematically exact. New Orleans v. Dukes, 427 U.S. 297, 303 (1976). The Petitioner's contention, that because the rule doesn't include firefighters or close relatives other than spouses within its purview it violates the Equal Protection Clause, runs headlong into this Court's holding that imperfect classifications are not a basis for their invalidity. In U.S. Railroad Retirement Bd. v. Fritz, supra, at page 175.

Although exclusion of firefighters from the policy would not render it violative of the Fourteenth Amendment, it appears as a matter of record that there was a logical and legitimate basis for excluding firefighters because dispatchers in the

fire department had no discretion in assigning fire calls to individual officers. Also, the fire department operation had different shift and personnel requirements (A-124).

When arguing that other county departments have no similar rule, the Petitioner ignores the fact that the Joint Services Board is a separate body politic from both the city and the county and is not a city or county department. (A-10) It is thus true that the Joint Services Board cannot promulgate rules for city or county departments but may only pass rules for Joint Services itself.

Where, as here, there is no suspect classification and no fundamental right is involved, rules may be enacted gradually or step by step. It is permissible if initial rules seek only to partially eliminate any

perceived problem. New Orleans v. Dukes, supra, 427 U.S. at 305. As the Supreme Court recognized, legislative and rule-making bodies have wide latitude in formulating regulations under their police and economic regulation powers. The judgment that one department may need such a no-spouse rule while another does not is one of policy, and this kind of policy is best left to the legislative branch of government. Vance v. Bradley, 440 U.S. 93, 102, (1979), held a court is not to sit as a "superlegislature" and second-guess the legislative policy in situations such as this. New Orleans v. Dukes, supra, at 303.

While Petitioner's brief quarrels with Schoenfeld by reason of several employees who question the efficacy of the objectives, the courts below found there is no real dispute as to the

Board's underlying purpose. (A-12) (Petitioner has inadvertently misquoted the policy under consideration. Petition-38.)

Vance v. Bradley, 440 U.S. 93, (1979) said that where considerations of a burden on a suspect group or a fundamental interest are absent,

> ... courts are reluctant to overturn governmental action on the ground that it denies equal protection of the laws. The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislatures actions were irrational.

Id. page 96-97.

The Petitioner has miscited the case of Yuhas v. Libby-Owens-Ford Co. by

directing the court to the reported district court citation (Petitioner's brief page 11). Actually, the district court was reversed. Please see Yuhas v. Libby-Owens-Ford Co., 562 F.2d 496 (7th Cir. 1977) cert. den. 435 U.S. 934 (1978). The Yuhas case is postured in a Title VII sex discrimination suit where, in an industrial plant setting, the court of appeals upheld a no-spouse rule. One of the reasons offered by the court in Yuhas is even more compelling here in the law enforcement setting:

> First, the marital relationship often generates intense emotions which would interfere with a worker's job performance. The typical employee is often able to temporarily put aside these emotional feelings when he or she goes to work because the work environment is sharply differentiated from the home environment. This distinction becomes impossible if the employee's spouse is also his or her coworker.

Id. at 499.

Public safety is one of the highest objectives of governmental policy that should not be compromised by unnecessary risk-taking. To minimize serious risk the Kenosha Joint Services board adopted a rational no-spouse policy. It is a reasonable no-spouse rule which provides other employment for the job-seeking spouse in the same department, in a different capacity, all in furtherance of a legitimate governmental goal.

C. The No-Spouse Policy Does Not Interfere With the Right To Marry and the Court's Interpretation and Application of Controlling Law Was Correct As a Matter of Law.

The Petitioner challenges the Court of Appeals' conclusion that the Joint Services no-spouse policy did not impinge upon the due process clause of the Fourteenth Amendment. At the trial court level, Heyden predicated her due

process violation charge as "a matter of law violation of substantive due process by interfering with marital relations and interfering with the economic affairs of a husband and wife..." (Appendix A) It appears the Petitioner has backed-off from directly saying that to this Court. However, it seems implicit that the marital status of the Petitioner, and that alone, is the basis for her claim of alleged Constitutional infirmities arising from the Joint Services' no-spouse rule.

In Zablocki v. Redhail, 434 U.S. 374 (1978), the Supreme Court held that the right to marry is a fundamental right and is a liberty protected by the Fourteenth Amendment's Due Process Clause. It went on to emphasize that "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship

may legitimately be imposed." Id. at 386. The Court of Appeals and District Court, in viewing the record in the light most favorable to the Petitioner properly concluded that "... it cannot be said that the Board's no-spouse policy significantly interferes with the right to marry. The policy is a reasonable public safety measure with minimal residual impact on the decision to marry; indeed the policy did not deter the plaintiffs themselves from getting married," citing Califano v. Jobst, 434 U.S. 47, 48-49 (1977); and Zablocki, supra, 434 U.S. at 387, footnote 12." (A-22).

Judge Gordon and the Seventh Circuit Court of Appeals could not help but notice the similarity between the case at bar and Califano v. Jobst, supra, as highlighted in footnote 12 of the Zablocki case. Here, as in

Califano, the joint plaintiffs (Mr. and Mrs. Sebetic) married. Quite different was the statute under consideration in Zablocki, supra, which completely prohibited the plaintiff's right to marry.

D. No Due Process Rights Accrued to Heyden Because She Had No Vested Property Interest In Employment As A Dispatcher

Petitioner Heyden had no enforceable expectation of employment under either Wisconsin law or under a contractual agreement with the Joint Services Board. In Board of Regents v. Roth, 408 U.S. 564 (1972), this Court held that only certain types of interests are accorded due process protection under the Fourteenth Amendment. Whether the due process requirements apply in the first place, a court must look to the nature of the interest at stake and then determine

whether that interest is within the Fourteenth Amendment's protection of liberty and property. Id., 408 U.S. at 570-571. The Fourteenth Amendment's procedural protection of property is a "...safeguard of the security interests that a person has already acquired in specific benefits." Id. 576 (emphasis added). A unilateral expectation of some prospective benefit is not enough. Bishop v. Wood, 426 U.S. 341, 344 (1976).

In this case it was undisputed that Petitioner Heyden was merely an applicant for the position of dispatcher (A-117). She had no enforceable expectation of continued employment.

II. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS NO CONFLICT OF DECISIONS ON THIS MATTER EXISTS.

The decision of the Seventh Circuit Court of Appeals below is entirely consistent with the decisions of other federal courts of appeal, state

courts of last resort and this Court on the issues presented.

Petitioner does not even contend in her brief in support of her Petition for Writ of Certiorari that the Seventh Circuit Court of Appeals decision here is in conflict with either other federal court of appeals decisions or decisions of state courts of last resort, nor does she contend that the decision conflicts with other decisions of this Court. However, she does cite several cases dealing with the marital status issues, namely: Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971); Califano v. Jobst, 434 U.S. 47 (1977); Zablocki v. Richhail, 434 U.S. 374 (1978); Stroud v. Delta Airlines, 544 F.2d 892, reh. den. 548 S. 356, (5th Cir. 1977) cert. den. 434 U.S. 844; Sprogis v. United Air Lines, Inc., 444 F.2d 1194 (7th Cir. 1971); Harper v. Trans. World Air Lines,

Inc., 525 F.2d 409 (8th Cir. 1975); Yuhas v. Libbey-Owens-Ford Co., supra. All of these cases are consistent with the seventh circuit opinion here. Petitioner does not cite any cases on point with which the Court of Appeals' decision now before the Court conflicts.

Califano, Zablocki, Stroud, and Sprogis all involved no-marriage policies or laws, not no-spouse policies such as the one now before the Court. These cases all involved policies which completely forbade marriage to anyone. In the case now before the Court dispatchers are not forbidden from marrying, they are merely prohibited from employment (as dispatchers only) if they are married to a City of Kenosha police officer or a Kenosha County Sheriff's deputy.

The Court of Appeals' decision in the case at bar is consistent with the

only United States Supreme Court decision dealing with a no-spouse policy cited by Petitioner in her brief in support of her petition for writ of certiorari, Phillips v. Martin Marietta Corp., supra. Phillips was a Title VII case in which the Court held employer distinctions based upon marital status could be bona fide occupational qualifications and upheld such distinction.

In Harper, supra, the 8th circuit court of appeals upheld an employment policy forbidding spouses from working in the same department. There is no conflict between the 7th circuit opinion in the case now before the Court and the 8th circuit opinion there.

The 7th Circuit decision in Yuhas, supra, consistent with the decision here, upheld a no-spouse employment rule in a manufacturing plant.

"No-spouse rules involving co-employees have generally been upheld as not constituting sex discrimination . . ." (Petition 10). The 7th Circuit Court of Appeals' decision in the case now before the Court is in no way in conflict with other court decisions on the matter involved, and certiorari should be denied here.

III. NO NEW AND IMPORTANT ISSUE FOR THE SUPREME COURT TO DECIDE.

A. The District Court and Court of Appeals Already Considered Petitioner's Claim of Disparate Impact.

Joint Services hired more females than males as dispatchers ever since its inception. (A-109, 110) Joint Services has more females than males employed as dispatchers now. If the intent of the Joint Services Board was to discriminate against women and employ mostly men as dispatchers, as the Petitioner claims, they certainly are going about it in

reverse order. To take the basic fact that most dispatchers hired are females and try to twist this fact into sex discrimination against females requires the convoluted reasoning found in the petition for certiorari.

The Court of Appeals, after briefs, oral argument and supplemental briefing, carefully considered and rejected the same disparate impact argument which Petitioner argues at length in the petition. The same "facts" were presented. They do not prove invidious intent and such was the finding of the Court of Appeals. (A-12)

Joint Services' policy is not gender-based in the first instance. It applies equally to male or female dispatchers. It is not gender-based in that it clearly applied to any spouse regardless of sex. The district court's reliance on Personnel Administrator of

Mass. v. Feeney, 442 U.S. 256 (1979) is well-placed. The Supreme Court in Feeney upheld a Massachusetts statute which granted an absolute life-time preference to veterans and concluded that this did not discriminate against women in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court reiterated the fundamental constitutional principle that "[w]hen the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern." Id. at 272. Any disparate impact claims are to be analyzed by answering two questions:

1. Whether the statutory classification is indeed neutral in the sense that it is not gender-based; and,

2. If it is not gender-based, whether the adverse effect reflects

invidious gender-based discrimination. Id. at 274.

Interestingly, the Supreme Court, in rejecting the female appellee's position in Feeney, readily distinguished the primary case relied upon by petitioner here in her Equal Protection argument. Yick Wo v. Hopkins, 118 U.S. 356 (1886). See, Feeney, supra, 442 U.S. at 275.

Aside from innuendo, the appellant in this case raises no support for any contention that the Joint Services' rule was intended to discriminate against either women or men. The rule was enacted to ensure public safety, a legitimate government goal. The court's analysis in Yuhas, supra, is particularly appropriate and dispositive of appellant's disparate impact argument.

> The no-spouse rule in this case does not operate as a "built-in

headwind" for women. It is unlike the requirement in Griggs [v. Duke Power Co., 401 U.S. 424 (1971)] that an employee have a high school diploma, or a rule that only the top-ranking contestants on a standardized test will be selected for employment, see United States v. City of Chicago, 549 F.2d 415 (7th Cir. 1977), or the rule in Dothard [v. Rawlinson, 433 U.S. 321 (1977)] that only people of a certain size may be hired. These employment tests all had a discriminatory impact because they focused on personal characteristics which members of a minority group were not as likely to possess, given their environmental or genetic background, as other job applicants. The no-spouse rule, on the other hand, does not place women at a disadvantage because they failed to develop certain personal characteristics as a consequence of their environmental or genetic backgrounds. Rather, the rule's discriminatory impact is the result of the historical fact that in the past far more men than women chose to work in defendant's Ottawa plants, with the result that substantially more than half of the employees in those plants are now men.

. . .

Because the no-spouse rule plausibly improves the work environment, and because it does not penalize women on the basis of their environmental or genetic

> background, we hold that the rule is job related.

562 F.2d at 500 (emphasis added).

Petitioner's attempt to distinguish Yuhas only reinforces its applicability. It is not enough to contend that Joint Services should schedule spouse dispatchers around the work schedules of the Sheriff's Department and Police Department to avoid the risk inherent. Arguably any no-spouse work rule could be "cured" by never having the married couple working at the same time. However, there is no duty to do so and it would be an unworkable situation for Joint Services in this setting (A-128-132).

Petitioner's disparate impact argument is not convincing.

B. The Supreme Court Has Recently Considered And Established The Rule For Evaluating Gender-Basis Equal Protection Attacks On Legislative Rules

In an effort to intrigue the Court to grant certiorari, the petition argues that a new instruction ought to be given to the lower courts on sex-discrimination equal protection cases. As noted previously in this brief, the Michael M., supra, decision refused to apply the "strict scrutiny" standard to gender-based classifications. This Court has held, however, that "the traditional minimum rationality test takes on a somewhat 'sharper focus' when gender-based classifications are challenged." Craig v. Boren, 429 U.S. 190, 210n*, (1976). The Court has restated the appropriate standard such that a gender-based classification will be upheld if it bears a substantial relationship to an important governmental objective. Id., 197.

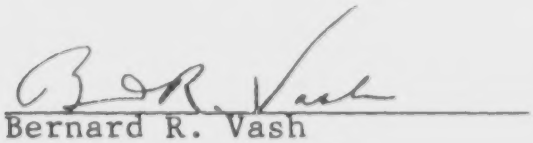
The case at bar offers no

compelling reason to reverse this recent ruling on the standards for review of gender-based classifications which are challenged under the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

The criteria for granting certiorari has not been met by the petitioner. The lower courts correctly found the no-spouse policy to be rationally related to public safety. There is no demonstrated conflict among decisions of the lower courts. This case presents no urgent reasons for granting review.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

MOTIONS FOR SUMMARY JUDGMENT AND RESPONSE TO DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD, JOHN D. BILOTTI, JOHN A. SERPE, STANLEY KERKMAN, EUGENE BILOTTI, JAMES FUNK, and DONALD ANDREOLI,

Defendants.

Civil Action No. 84-C-1605

COMES NOW the above captioned plaintiffs, by their duly authorized attorneys, SFASCIOTTI & STERN, by Walter

W. Stern, and requests the honorable Court pursuant to Rule 56 of the Federal Rules of Civil Procedure to grant summary judgment to both plaintiffs, considering the complaints, affidavits, and documents on file herein in the following respects:

1. That the plaintiff, in the case of Beverly M. Sebetic, was terminated and in the case of Debra Heyden was not hired by Joint Services defendants because said plaintiffs were married to deputy sheriffs for Kenosha County.

2. That the only regulation guiding these employment decisions made by the defendants was a husband/wife exclusionary rule dated October 27, 1982, which prohibited hiring as a dispatcher/complaint taker for the Kenosha City and County Joint Services a spouse of any person who was a deputy sheriff for Kenosha County or City of Kenosha Police Officer.

3. That this rule is a denial of Equal Protection of the Law, pursuant to the Fourteenth Amendment to the United States Constitution in that the husband/wife exclusionary rule did not apply to City of Kenosha firefighters, so that two spouses could be dispatcher/ complaint takers while their spouses served as firefighters. The policy does not apply to recordkeepers who also have close daily contact with police officers for the City of Kenosha and Kenosha County Deputies. The policy is arbitrary and capricious, creating an unreasonable classification because it attempts to control employees of Joint Services in terms of the employment of his or her spouse.

4. That, for the reasons more particularly setforth in the affidavits the dispatch equipment provides four separate consoles for law enforcement

agencies, to wit, fire, police, deputy sheriff, and county fire, and both plaintiffs could have reasonably been placed on a console which would not cause even a possibility of any future conflict. There is also a separate desk area provided for a complaint taker which does not dispatch police personnel. There are three different shifts for dispatcher so the plaintiffs could have been placed on different shifts from their spouses to have avoided the drastic economic impact of the defendants' decision pursuant to the arbitrary authority granted under the regulation.

5. The record discloses as a matter of law violation of substantive due process by interfering with marital relations and interfering with the economic affairs of a husband and wife without legitimate reasons or provable concerns contrary to the Due Process

Clause of the Fourteenth Amendment to the United States Constitution.

6. That in accordance with the affidavits, from 1982 to the present dispatcher/complaint takers are predominately women i.e., out of 20 to 21 employees who are dispatcher/complaint takers, there has never been more than 4 men working all three shifts as dispatcher/complaint takers. Because of the disparate impact, and the fact that the Kenosha City Police Department and Kenosha Sheriff's Department are 95% male, the defendants have each committed acts of sexual discrimination against these two plaintiffs. Terminating plaintiff Sebetic and refusing to hire Debra Heyden because of their spousal relationships with deputy sheriffs for Kenosha County constitutes job discrimination. The disparate impact of the defendants' discriminatory acts are violations of the Equal Protection Clause

of the Fourteenth Amendment to the United States Constitution.

7. That, if the Court denies the plaintiffs' request for summary judgment, the plaintiffs request that the Court determine that there are substantial and real factual questions concerning the reasons or justifications for the policy and the manner in which the policy operates both within the Joint Services and as applied to the City and County of Kenosha.

Dated this ___ day of _____, 1987.

Respectfully Submitted,

_____
Walter W. Stern
Attorney for Plaintiffs

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